

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

TRI-STATE GENERATION AND
TRANSMISSION ASSOCIATION,
INC., a Colorado Nonprofit
Cooperative Corporation,

Plaintiff,

v.

No. CIV-13-0085 KG/LAM

NEW MEXICO PUBLIC REGULATION
COMMISSION, a New Mexico Agency, and
its members, Commissioners Patrick H. Lyons,
Theresa Becenti-Aguilar, Ben L. Hall,
Valerie Espinoza, and Karen L. Montoya,
acting in their official capacities,

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION FOR TEMPORARY STAY
OF PROCEEDINGS [Doc. 103] and MOTION TO RESCHEDULE INITIAL
SCHEDULING CONFERENCE [Doc. 104]**

THIS MATTER is before the Court on Plaintiff's *Motion for Temporary Stay of Proceedings (Doc. 103)* and *Motion to Reschedule Initial Scheduling Conference (Doc. 104)*, both filed September 23, 2015. Although Plaintiff states in each motion it was "advised that Defendants will oppose [each] motion," Defendants have not responded to the motions and the time for doing so has passed. Having considered the motions and record of the case, and upon consultation with the presiding judge in this case, the Court **FINDS** that the motions are well-taken and should be **GRANTED**.

In its motion for a temporary stay, Plaintiff states that "Tri-State and the 12 rural electric Cooperatives who are New Mexico Members of Tri-State negotiated concerning a possible

settlement of many issues, including the issue of the NMPRC's jurisdiction over Tri-State's interstate wholesale rates, which is the fundamental issue addressed in this action.” [Doc. 103 at 1-2]. Therefore, Plaintiff asks the Court to grant a temporary stay of this case until February 1, 2016 to allow the parties time to continue these negotiations in order to reach a “Global Settlement.” *Id.* at 3-4. In addition, Plaintiff asks the Court to vacate the Initial Scheduling Conference that is currently set in this case for October 29, 2015, and to reschedule it in February 2016. [Doc. 104].

While Plaintiff states that the motions are opposed, Defendants have not filed a response to either motion, and the time for responding has passed. “The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion.” D.N.M. LR-Civ. 7.1(b). Defendants’ failure to timely respond to the motions, therefore, constitutes consent to the grant the motions. Moreover, on October 15, 2015, the parties filed their *Third Amended Joint Status Report and Provisional Discovery Plan* (Doc. 105), in which there is nothing to indicate that Defendants continue to oppose these motions and, instead, the parties have requested deadlines that would apply in the event Plaintiff’s motion for a stay is granted. *See* [Doc. 105 at 1]. For these reasons, the Court will grant the motions and will order the parties to notify the Court no later than January 15, 2016 regarding the status of the settlement negotiations.

IT IS THEREFORE ORDERED that Plaintiff’s *Motion for Temporary Stay of Proceedings* (Doc. 103) and *Motion to Reschedule Initial Scheduling Conference* (Doc. 104) are **GRANTED**.

IT IS FURTHER ORDERED that the parties shall notify the Court **no later than January 15, 2016 regarding the status of the settlement negotiations.**

IT IS SO ORDERED.


LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE